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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CR. APPEAL NO. 338 /95.

APPELLANT : GANESH SATNAMI aged 30 years
(Accused)
(IN JAIL) S/o Kondo Satnami, resident of
village Maro, Police out post Maro,
Police Station House Nawagarh, Distt
DURG

versus

RESPONDENT : State of M.P.

APPEAL U/S 374 (2) CR. PR. CODE

3250
6/3/98
Tawar Kal

(५२)

आदेश पत्रक
मामला क्रमांक **Criminal Appeal** NO. 338/95
सन् 200
 **विरुद्ध**

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench:</u> <u>Hon'ble Shri Justice L.C. Bhadoo, &</u> <u>Hon'ble Shri Justice V.K. Shrivastava, JJ.</u> <u>09/10/2006</u> Shri V.G. Tamaskar, counsel for the appellant. Shri G.D. Vaswani, Additional Public Prosecutor with Shri D.K. Gwalre, Dy. Govt. Advocate for the State. Oral judgment dictated on <i>Dais</i>. <u>PER L.C. BHADOO, J.</u> This appeal is directed against the judgment of conviction and order of sentence dated 22/02/1995 passed by VI Additional Sessions Judge, Durg, Camp at Bemetara, in Sessions Trial No. 336/92 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life. The case of the prosecution, in brief, is that in the morning of 05/07/1992 Shiv Kumar, Kotwar of village Maro went to the house of the accused in search of labourer. Shiv Kumar called the accused/appellant, but when he did not come out from the house, when he entered the house of the accused, he saw that the accused/appellant was assaulting his wife with knife and she was lying dead near the cot. There was blood on the ground. Seeing this, Kotwar rushed to the Police out-post Maro and gave merg	

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	intimation (Ex.P/9), based on that crime No.0/92 was registered for commission of offence under Section 302 of the IPC and the same was sent for registration of the case in the Police Station Nandghat where first information report (Ex.P/18) was registered. The Investigating Officer left to the scene of occurrence after giving notice (Ex.P/5) to the Panchas and prepared the inquest report (Ex.P/6) of the body of deceased-Bena Bai. During police custody accused/appellant gave his memorandum statement and in pursuance of that the book of "Satyakatha" was seized under Ex.P/3 and the knife was seized under Ex.P/4. The body of Bena Bai was sent for postmortem examination to the Primary Health Centre, Bhatapara, where Dr. O.P. Sharma (PW/15) conducted the postmortem, prepared the postmortem report (Ex.P/19) and opined that cause of death of Bena Bai was due to excessive haemorrhage due to injury of carotid artery and trachea which resulted in shock and death. After completion of the investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Bemetara, who in turn committed the case to the Sessions Judge, Durg, from where he received the case for trial. The prosecution in order to establish the charge against accused examined fifteen witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and	

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	stated that at the time of incident he was in his agricultural field and he does not know how the incident has happened and he has been falsely implicated in the crime. Learned Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused/appellant, convicted and sentenced the accused as mentioned in para one of this judgment. We have heard Shri V.G. Tamaskar, learned counsel for the accused/appellant and Shri G.D.Vaswani, learned Additional Public Prosecutor for the State. Learned counsel for the appellant has not disputed the homicidal death of Bena Bai. Apart from that, as per the evidence of Dr. O.P. Sharma (PW/15) who has stated that on 06/07/1992 when he was working as an Assistant Surgeon in Primary Health Centre, Bhatapara, on the request of Station House Officer, Police Station: Nandghat he conducted the postmortem on the body of Bena Bai and noticed two injuries on the neck and one injury on the abdomen of the deceased Bena Bai and she died on account of excessive haemorrhage due to injury of carotid artery and trachea. Therefore, in view of the above evidence of Dr. O.P. Sharma (PW/15), it is established that the death of Bena Bai was homicidal in nature.	

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	As far as involvement of the accused in commission of the crime in question is concerned, as per the prosecution case, the crime was witnessed by Shiv Kumar, Kotwar (PW/2) and he lodged the report that on the fateful day he went to the house of the accused/appellant in search of the labourer and when he entered the house of the accused/appellant, accused/appellant was assaulting Bena Bai with knife, but this witness has turned hostile and he has not supported the prosecution case. Even, other witnesses have turned hostile. As far as recovery of the knife, the weapon of the offence at the instance of the accused is concerned, knife was already stuck in the neck of the deceased, and it was seized from there, therefore, the information given by the accused has no relevancy. It is not a case that the knife, weapon of the offence was within the knowledge of the accused only. Apart from that, as per the prosecution witnesses, PW/4 Daniya Bai and PW/5 Konda @ Shuklawa have stated that in the morning of fateful day they along with the accused/appellant went to the agricultural field and while they were working in the field, they came to know about the incident and on receiving information they came to the house of the accused. Therefore, even the presence of the accused at the time of commission of the crime has not been established at the place of occurrence, as such, therefore is no evidence on record connecting the appellant with the crime in question. The finding of the trial Court is not based on	

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Raju	any legal evidence, connecting the accused/appellant with the crime in question, therefore, the same cannot be sustained. For the foregoing reasons, the appeal is allowed. Conviction and sentence imposed on the accused/appellant under Section 302 of the IPC are set aside and he be set at liberty forthwith, if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- V.K.Shrivastava Judge

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12/10/04
30/10/04